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February 27, 2018

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Via E-mail: abircher@ncdoj.gov & USPS

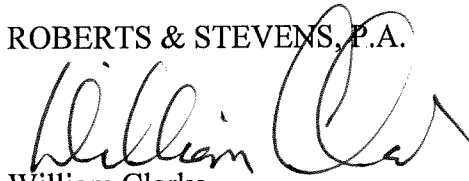
*Re: 17 EHR 05898 and 17 EHR 07415 / Claudene Cody et al v. Division of Waste
Management and Division of Water Resources / Graham County*

Dear Amy:

Enclosed please find fully executed copies of the Settlement Agreements with the Cody's original signatures. Please note that Dirk Cody signed for Claudene Cody, "with permission," as she is and has been in critical condition for some time. I signed the agreement today, February 27, 2018. I will file voluntary dismissals with prejudice in both cases on or before March 13th, 2018. Payment in full of the settlement amount in each case will be made on or before March 29th, 2018. Your cooperation and assistance in resolving these matters is most appreciated. Please let me know if you have questions.

Sincerely,

ROBERTS & STEVENS, P.A.



William Clarke

BC/sh
Enclosures
cc: Dirk Cody (via e-mail)

STATE OF NORTH CAROLINA
COUNTY OF GRAHAM

IN THE OFFICE OF ADMINISTRATIVE
HEARINGS
17-EHR-07415

CLAUDENE CODY d/b/a TEXACO FOOD
MART, DIRK CODY, DAVID CODY AND
DANA CODY ADAMS

PETITIONERS,

v.

STATE OF NORTH CAROLINA,
DEPARTMENT OF ENVIRONMENTAL
QUALITY, DIVISION OF WATER
RESOURCES

RESPONDENT.

SETTLEMENT AGREEMENT

Petitioners Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody and Dana Cody Adams ("Petitioners") and Respondent North Carolina Department of Environmental Quality ("NCDEQ"), Division of Water Resources ("DWR") ("Respondent") hereby enter into this Settlement Agreement ("Agreement") in order to resolve a matter in controversy between them. This matter arose out of the issuance of a Civil Penalty Assessment in the amount of \$153,300.00 plus \$14,063.63 for investigative costs ("CPA") (attached hereto as Exhibit A). The CPA was for alleged violations of N.C. Gen. Stat. § 143-215.83, 15A NCAC 02B .0211, and 15A NCAC 02B .0215, as described in the CPA.

Without any hearing of fact or law in the above-styled matter, IT IS THEREFORE AGREED BY THE PARTIES THAT:

1. In order to avoid the cost and delay of further litigation, the parties have entered into this Agreement and have agreed that all parties have been correctly designated and that there is no question as to misjoinder or nonjoinder.

2. The Petitioners shall pay DWR seventy percent (70%) of the \$153,300.00 civil penalty plus the \$14,063.63 for investigative costs, for an amount totaling \$121,373.63 ("Settlement Amount"), in full settlement of all violations described in the CPA. The Settlement Amount shall be made in a lump sum payment due within thirty (30) calendar days of the execution of this Agreement. The payment shall be made by check and made payable to the "North Carolina Department of Environmental Quality" and delivered to the following address:

If sending via US Postal Service

Shelton Sullivan
DWR-401 & Buffer Permitting Branch
1617 Mail Service Center
Raleigh North Carolina 27699-1617

If sending via delivery service (UPS, FedEx, etc.)

Shelton Sullivan
DWR-401 & Buffer Permitting Branch
512 N. Salisbury Street
Raleigh, NC 27604

3. Within fourteen (14) days of execution of this Agreement by the parties, the Petitioners shall file a notice of voluntary dismissal with prejudice of the Petitioners' Petition for Contested Case Hearing in the above captioned matter, 17 EHR 07415.
4. This agreement only addresses the civil penalties identified in the attached CPA and does not address in any way other penalties assessed by Divisions within NCDEQ, including penalties assessed by the Division of Waste Management. Furthermore, nothing in this Agreement shall restrict the right of NCDEQ, including DWR, to inspect or take enforcement action against Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody and Dana Cody Adams for any other violations of the water quality statutes, the relevant rules promulgated thereunder, or any water quality permits or certificates held by Petitioners. Similarly, nothing in this Agreement shall restrict the right of the Petitioners to contest any other enforcement action.

5. It is understood and agreed that payments made or actions taken pursuant to the terms of this Agreement are not to be construed as an admission of liability by Petitioners, nor as an admission by the Respondent that the penalty was improperly issued, and that this Agreement is a compromise of disputed claims.
6. The Petitioners and Respondent agree that, for purposes of any future bankruptcy proceeding, this Agreement is not intended as, nor shall it be deemed to constitute, a novation of any claims asserted by the Respondent against the Petitioners. Petitioners further agree that pursuant to 11 U.S.C. § 523 all sums payable to the Respondent pursuant to this Agreement are nondischargeable in bankruptcy. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Respondent in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Respondent's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.
7. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole agreement between them.
8. This Agreement is entered into knowingly, intelligently, and voluntarily and shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto. The Petitioners were represented by counsel, William Clarke of Roberts & Stevens, P.A.

**RESPONDENT NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL
QUALITY, DIVISION OF WATER RESOURCES**



Landon Davidson
Regional Supervisor, Asheville Regional Office
Division of Water Resources
North Carolina Department of Environmental Quality
2/15/2018

Executed this the ____ day of February, 2018.

Approved by:



William F. Lane
General Counsel
North Carolina Department of Environmental Quality

This the 15th day of February, 2018.

**PETITIONERS CLAUDENE CODY DBA TEXACO FOOD MART, DIRK CODY,
DAVID CODY AND DANA CODY ADAMS**

Claudene Cody by Dirk Cody with permission 2-22-2018
Claudene Cody

Dirk Cody 2-22-2018
Dirk Cody

David Cody 2-22-2018
David Cody

Dana Cody Adams 2-22-2018
Dana Cody Adams

William Clarke 2-22-2018
William Clarke
Counsel for Petitioners
Roberts & Stevens, PA



Water Resources
Environmental Quality

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
S. JAY ZIMMERMAN
Director

September 29, 2017

CERTIFIED MAIL 7016 1370 0001 6572 0679

RETURN RECEIPT REQUESTED

Claudene Cody DBA Texaco Food Mart
P.O. Box 218
Robbinsville, NC 28771

CERTIFIED MAIL 7016 1370 0001 6572 0686

RETURN RECEIPT REQUESTED

Dirk Cody, David Cody, & Dana Cody-Adams
P.O. Box 1117
Robbinsville, NC 28771

SUBJECT: Civil Penalty for Violations of N.C.G.S. § 143-215.83, 15A NCAC 02B .0211, and 15A NCAC 02B .0215.
Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams
CASE NO. OC-2017-0001
Graham County, N.C.

Dear Responsible Party:

This letter transmits a civil penalty in the amount of **\$153,300.00** civil penalty against **Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams** in addition to **\$14,063.63** enforcement costs. Attached is a copy of the assessment document explaining this penalty.

This action was taken under the authority vested in me by delegation provided by the Secretary of the Department of Environmental Quality and the Director of the Division of Water Resources. Any continuing violation(s) may be the subject of a new enforcement action, including an additional penalty.

Within **thirty (30) days** of receipt of this notice, you must do one of the following three-options:

1. Submit payment of the penalty, **OR**
2. File a request for remission of civil penalties, **OR**
3. File a written petition with the Office of Administrative Hearings.

Failure to exercise one of the above three options within thirty (30) calendar days of your receipt of these documents will result in this matter being referred to the Attorney General's Office with a request to initiate a civil action to collect the penalty.

These options are detailed below:

1. Submit payment of the penalty:

Payment should be made directly to the order of the Department of Environment and Natural Resources (*do not include waiver form*). Payment of the penalty will not foreclose further enforcement action for any continuing or new violation(s). Please submit payment to the attention of:

If sending via US Postal Service

Karen Higgins

DWR – 401 Buffer Permitting Branch

1617 Mail Service Center

Raleigh, North Carolina 27699-1617

If sending via delivery service (UPS, FedEx, etc.)

Karen Higgins

DWR – 401 Buffer Permitting Branch

512 N. Salisbury Street

Raleigh, North Carolina 27604

OR

2. Submit a written request for remission or mitigation including a detailed justification for such request:

Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Because a remission request forecloses the option of an administrative hearing, such a request must be accompanied by a waiver of your right to an administrative hearing and a stipulation and agreement that no factual or legal issues are in dispute. Please prepare a detailed statement that establishes why you believe the civil penalty should be remitted, and submit it to the Division of Water Resources at the address listed below. In determining whether a remission request will be approved, the following factors shall be considered:

- (1) whether one or more of the civil penalty assessment factors in NCGS 143B-282.1(b) was wrongfully applied to the detriment of the petitioner;
- (2) whether the violator promptly abated continuing environmental damage resulting from the violation;
- (3) whether the violation was inadvertent or a result of an accident;
- (4) whether the violator had been assessed civil penalties for any previous violations; or
- (5) whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

Please note that all evidence presented in support of your request for remission must be submitted in writing. The Director of the Division of Water Resources will review your evidence and inform you of his decision in the matter of your remission request. The response will provide details regarding the case status, directions for payment, and provision for further appeal of the penalty to the Environmental Management Commission's Committee on Civil Penalty Remissions (Committee). Please be advised that the Committee cannot consider information that was not part of the original remission request considered by the Director. Therefore, it is very important that you prepare a complete and thorough statement in support of your request for remission.

In order to request remission, you must complete and submit the enclosed "Request for Remission of Civil Penalties, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form within thirty (30) days of receipt of this notice. The Division of Water Resources also requests that you complete and submit the enclosed "Justification for Remission Request." Both forms should be submitted to the following address:

If sending via US Postal Service

Karen Higgins

DWR – 401 Buffer Permitting Branch

1617 Mail Service Center

Raleigh, North Carolina 27699-1617

If sending via delivery service (UPS, FedEx, etc.)

Karen Higgins

DWR – 401 Buffer Permitting Branch

512 N. Salisbury Street

Raleigh, North Carolina 27604

Or

3. File a petition for an administrative hearing with the Office of Administrative Hearings:

If you wish to contest any statement in the attached assessment document, you must file a petition for an administrative hearing. You may obtain the petition form from the Office of Administrative Hearings. You must file the petition with the Office of Administrative Hearings within thirty (30) days of receipt of this notice. A petition is considered filed when it is received in the Office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., except for official state holidays. The original and one (1) copy of the petition must be filed with the Office of Administrative Hearings. The petition may be faxed - provided the original and one copy of the document is received in the Office of Administrative Hearings within five (5) business days following the faxed transmission. The mailing address for the Office of Administrative Hearings is:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, North Carolina 27699-6714
Telephone (919) 733-2698 Facsimile: (919) 733-3478

And

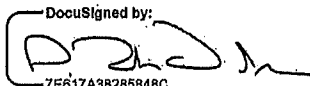
Mail or hand-deliver a **copy** of the petition to

General Counsel
Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, North Carolina 27699-1601

Please indicate the case number (as found on page one of this letter) on the petition. Failure to exercise one of the options above within thirty (30) days of receipt of this letter, as evidenced by an internal date/time received stamp (not a postmark), will result in this matter being referred to the Attorney General's Office for collection of the penalty through a civil action. Please be advised that additional penalties may be assessed for violations that occur after the review period of this assessment.

If you have any questions, please contact Brett Laverty or me at 828-296-4500.

Sincerely,

DocuSigned by:

7E617A3B28584BC...

G. Landon Davidson, P.G.
Regional Supervisor
Asheville Regional Office
Water Quality Regional Operations

cc: DWR – 401 Buffer Permitting Branch (e-copy)
Mr. Billy Clarke – Roberts and Stevens, P.A. (e-copy)

STATE OF NORTH CAROLINA

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY

COUNTY OF GRAHAM

IN THE MATTER OF ASSESSMENT
OF CIVIL PENALTIES AGAINST
CLAUDENE CODY DBA TEXACO
FOOD MART, DIRK CODY, DAVID
CODY, AND DANA CODY-ADAMS

)
)
)
)
)

**WAIVER OF RIGHT TO AN
ADMINISTRATIVE HEARING
AND STIPULATION OF FACTS**

FILE NO. OC-2017-0001

Having been assessed civil penalties totaling \$167,363.63 for violation(s) as set forth in the assessment document of the Division of Water Resources dated September 29, 2017, the undersigned, desiring to seek remission of the civil penalty, does hereby waive the right to an administrative hearing in the above-stated matter and does stipulate that the facts are as alleged in the assessment document. The undersigned further understands that all evidence presented in support of remission of this civil penalty must be submitted to the Director of the Division of Water Resources within thirty (30) days of receipt of the notice of assessment. No new evidence in support of a remission request will be allowed after (30) days from the receipt of the notice of assessment.

This the _____ day of _____, 20____

SIGNATURE

ADDRESS

TELEPHONE

JUSTIFICATION FOR REMISSION REQUEST

DWR Case Number: **OC-2017-0001**

County: **Graham**

Assessed Party: **Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams**

Amount Assessed: **\$167,363.63**

Please use this form when requesting remission of this civil penalty. You must also complete the "Request For Remission, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form to request remission of this civil penalty. You should attach any documents that you believe support your request and are necessary for the Director to consider in evaluating your request for remission. Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Pursuant to N.C.G.S. § 143B-282.1(c), remission of a civil penalty may be granted only when one or more of the following five factors applies. Please check each factor that you believe applies to your case and provide a detailed explanation, including copies of supporting documents, as to why the factor applies (attach additional pages as needed).

- ☐ (a) one or more of the civil penalty assessment factors in N.C.G.S. 143B-282.1(b) were wrongfully applied to the detriment of the petitioner (*the assessment factors are listed in the civil penalty assessment document*);
- ☐ (b) the violator promptly abated continuing environmental damage resulting from the violation (*i.e., explain the steps that you took to correct the violation and prevent future occurrences*);
- ☐ (c) the violation was inadvertent or a result of an accident (*i.e., explain why the violation was unavoidable or something you could not prevent or prepare for*);
- ☐ (d) the violator had not been assessed civil penalties for any previous violations;
- ☐ (e) payment of the civil penalty will prevent payment for the remaining necessary remedial actions (*i.e., explain how payment of the civil penalty will prevent you from performing the activities necessary to achieve compliance*).

STATE OF NORTH CAROLINA

NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY

COUNTY OF GRAHAM

IN THE MATTER OF)
Claudene Cody DBA Texaco Food Mart,)
Dirk Cody, David Cody, and)
Dana Cody-Adams)

CASE NO. OC-2017-0001

FOR VIOLATIONS OF)
N.C.G.S. § 143-215.83)
15A NCAC 02B .0211 and)
15A NCAC 02B .0215)

FINDINGS AND DECISION
AND ASSESSMENT OF
CIVIL PENALTIES

Acting pursuant to delegation provided by the Secretary of the Department of Environmental Quality and the Director of the Division of Water Resources (DWR), pursuant to North Carolina General Statute (hereby known as G.S.) 143-215.6A, I, G. Landon Davidson, Regional Supervisor of the Water Quality Regional Operations Section, DWR make the following:

I. FINDING OF FACT

- A. Claudene Cody DBA Texaco Food Mart is the owner of record for underground fuel storage tanks associated with Crown Food Mart located on 272 Rodney Orr Bypass in Graham County, North Carolina.
- B. Dirk Cody, David Cody, and Dana Cody-Adams are the owners of record for the property (Parcel 5660-08-03-0023) located at 272 Rodney Orr Bypass in Graham County, North Carolina, where the Crown Food Mart is located.
- C. On August 16, 2016, DWR staff conducted a site inspection as the result of a complaint from the Graham County Emergency Management Services and observed petroleum product discharging from the west bank of Tulula Creek (locally known as "Tallulah") along an approximately 600-foot reach of stream between Jordon Street and Patton Street in the Town of Robbinsville. The magnitude of the release required immediate emergency response coordination with the United States Environmental Protection Agency's (USEPA) Federal On-Scene Coordinator for North Carolina.
- D. G.S. 143-215.83 states that it shall be unlawful, except as otherwise provided in this Part, for any person to discharge, or cause to be discharged, oil or other hazardous substances into or upon any waters, tidal flats, beaches, or lands within this State, or into any sewer, surface water drain or other waters that drain into the waters of this State, regardless of the fault of the person having control over the oil or other hazardous substances, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause.

- E. On August 17, 2016, Mr. Dirk Cody signed a USEPA Notice of Federal Interest document stating that a pollution incident occurred or threatens to occur at 272 Rodney Orr Bypass (Crown Food Mart) Robbinsville, NC for which he may be financially responsible.
- F. On August 19, 2016, the Graham County Department of Public Health issued a Recreational Use Advisory for 0.08 miles of Tulula Creek and 1.15 miles of the Cheoah River. Due to the presence of petroleum product in the stream, residents were advised to refrain from swimming, wading, fishing, and consuming fish until further notice. An earlier advisory issued on August 16, 2016, advised individuals to "stay out of the area of Cheoah River" and "not to come in contact with water, sediment or visible sheen within the Cheoah River".
- G. On May 4, 2017, the North Carolina Division of Public Health, Occupational and Environmental Epidemiology Branch made a recommendation to continue the Recreational Use Advisory until the source of contamination is controlled and stream sediments and fish tissue can be evaluated for petroleum hydrocarbons. The Recreational Use Advisory has been in effect for 378 days as of September 1, 2017.
- H. Title 15A North Carolina Administrative Code 02B .0211 (2) requires that "The waters shall be suitable for aquatic life propagation and maintenance of biological integrity, wildlife, secondary recreation, and agriculture; sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard." Title 15A North Carolina Administrative Code 02B .0211 (2) is applicable to Class C waters. The impacted waters are classified as WS-III which are also protected for Class C uses.
- I. On August 19, 2016, the Division of Waste Management's Underground Storage Tank (UST) Section received a 24-hour release and UST Leak Reporting Form documenting the loss of product from the premium UST located at the Crown Food Mart, 272 Rodney Orr Bypass in Robbinsville, N.C. The form indicated that the leak was discovered on August 16, 2016.
- J. On August 23, 2016, the UST Section issued a Notice of Violation (NOV) to Claudene Cody DBA Texaco Food Mart for violations at the Crown Food Mart located at 272 Rodney Orr Bypass in Graham County, North Carolina. The NOV noted the failure to conduct leak rate tests, failure to maintain records demonstrating compliance with the leak detection requirements, failure to complete Primary Operator training, and the failure to report and investigate a suspected release after repeated Continuous Statistical Leak Detection fails for the premium unleaded gasoline tank on April 1, 2016, June 4, 2016, and July 28, 2016.

- K. On August 23, 2016, the DWR initiated surface water monitoring in sections of Tulula Creek and the Cheoah River. Monitoring stations SW02 and SW03 were set up on the downstream Cheoah River. Volatile organic compounds (VOC) have been monitored on a weekly basis at both SW02 and SW03 monitoring sites beginning August 18, 2016. Analytical results indicated detection of benzene, ethylbenzene, toluene, and xylene within this section of the Cheoah River.
- L. Analytical results indicated that benzene concentrations exceeded the Water Supply surface water standard for 52 sampling events at monitoring site SW02 and 19 sampling events at monitoring site SW03 between August 18, 2016 and September 1, 2017.
- M. 15A NCAC 02B .0215 (3)(h)(ii)(C) states the applicable surface water standard for benzene is 1.19 ug/l for Class WS-III waters.
- N. Analytical results indicated that toluene concentrations exceeded the Trout Waters surface water standard for 60 sampling events at monitoring site SW02 and 57 sampling events at monitoring site SW03 between August 18, 2016 and September 1, 2017.
- O. 15A NCAC 02B .0211 (19) states the applicable surface water standard for toluene is 11 ug/l or 0.36 ug/l in trout classified waters. The impacted waters are classified as WS-III which are also protected for Class C uses.
- P. Analytical results of samples collected from SW02 and SW03 for the period August 18, 2016 through August 31, 2017 as referenced herein are summarized in the attached Appendix A.
- Q. Tulula Creek, stream index 2-190-2-(14), is classified as a Water Supply III (WS-III) stream critical area (CA) with a supplemental Trout (Tr) designation. Cheoah River, stream index 2-190-(1), is classified as a WS-III CA with Tr designation.
- R. On September 2, 2016, Claudene Cody DBA Texaco Food Mart was issued a Notice of Violation and Notice of Intent to Enforce (NOV/NOI) for violation of G.S. 143-215.83, 15A NCAC 02B .0211(1), 15A NCAC 02B .0211(2), 15A NCAC 02B .0211(19), 15A NCAC .0215(1), and 15A NCAC .0215(3)(h)(ii)(C). Claudene Cody DBA Texaco Food Mart received the NOV on September 8, 2016.
- S. On September 15, 2016, a response to the NOV/NOI was received. The response was prepared by counsel representing Claudene and Herve Cody d/b/a Crown Food Mart, and acknowledged that there was a release of petroleum product from an UST used for storage and dispensation of premium unleaded gasoline at the Crown Food Mart on or around August 18, 2016. The response letter indicated that gasoline had infiltrated the soil and groundwater between the Crown Food Mart and Tulula Creek. The response further described action

taken by the Claudene and Herve Cody d/b/a Crown Food Mart and consultants to address the release.

- T. On March 8, 2017, Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams (Cody's) were issued a Notice of Violation and Notice of Intent to Enforce (NOV/NOI) from DWR for violations of G.S. 143-215.83(a), G.S. 143-215.1(a)(6), 15A NCAC 02B .0211(1), 15A NCAC 02B .0211(2), 15A NCAC 02B .0211(19), 15A NCAC 02B .0215(1), 15A NCAC .0215(2), and 15A NCAC 02B .0215(3)(h)(ii)(C). Claudene Cody DBA Texaco Food Mart received the NOV on March 14, 2017. Dirk Cody, David Cody, and Dana Cody-Adams received the NOV on March 10, 2017.
- U. On March 17, 2017, a response to the March 8, 2017, NOV/NOI was received by counsel representing Ms. Claudene Cody, Mr. Dirk Cody, Mr. David Cody and Ms. Dana Cody Adams. The response acknowledged that there was a release of petroleum product from an UST used for storage and dispensation of premium unleaded gasoline at the Crown Food Mart on or around August 18, 2016.
- V. According to DWR records, Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams have not been assessed a civil penalty in the preceding five years by DWR. Claudene Cody DBA Texaco Food Mart was assessed a civil penalty by the UST Section on August 4, 2017 for violations of 15A NCAC 2N .0502, .0504, .0506, .0601, and .0603. The civil penalty totaled \$10,774.89.
- W. The cost to the State of the enforcement procedures in this matter totaled \$14,063.63.

Based upon the above Finding of Fact, I make the following:

II CONCLUSIONS OF LAW

- A. Claudene Cody DBA Texaco Food Mart is a "person" within the meaning of G.S. 143-215.6A pursuant to G.S. 143-212(4) and G.S. 143.215.77(13).
- B. Dirk Cody, David Cody, and Dana Cody-Adams are "persons" within the meaning of G.S. 143-215.6A pursuant to G.S. 143-212(4) and G.S. 143.215.77(13).
- C. Tulula Creek and Cheoah River constitute waters of the state within the meaning of G.S. 143.212(6) and G.S.143-215.77(18).
- D. Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams violated G.S. 143-215.83(a) by discharging petroleum product(s) from underground storage tank(s) USTs to waters of the state.

- E. Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams violated 15A NCAC 02B .0211 (2) by the discharge of petroleum product(s) to Tulula Creek and Cheoah River resulting in the issuance of a recreational use advisory for 378 days from August 19, 2016 to September 1, 2017.
- F. Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams violated 15A NCAC 02B .0215 (3)(h)(ii)(C)) by impacts from petroleum product(s) such that benzene concentrations exceeded the Water Supply surface water standard for 52 sampling events at monitoring site SW02 and 19 sampling events at monitoring site SW03 between August 18, 2016 and September 1, 2017. Between the two monitoring sites, the stream standard for benzene was violated a total of 53 times.
- G. Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams violated 15A NCAC 02B .0211(19) by impacts from petroleum product(s) such that toluene concentrations exceeded the Trout Waters surface water standard for 60 sampling events at monitoring site SW02 and 57 sampling events at monitoring site SW03 between August 18, 2016 and September 1, 2017. Between the two monitoring sites, the stream standard for toluene was violated a total of 61 times.
- H. Pursuant to G.S. 143-215.6A(a) and (b), a civil penalty of not more than twenty-five thousand dollars (\$25,000) per violation per day may be assessed against a person who violates any classification, standard, limitation or management practice established pursuant to G.S. 143-214.1, 143-214.2 or 143-215. Pursuant to G.S. 143-215.6A(b1), violators who have not been assessed a civil penalty in the preceding five years may be assessed a maximum penalty of ten thousand (\$10,000) per day for continuous violations.
- I. Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams may be assessed civil penalties pursuant to G.S. 143-215.6A (a)(6) which provides that a civil penalty of not more than twenty-five thousand dollars (\$25,000.00) per violation per day may be assessed against a person who violates a rule of the Commission implementing this Part, Part 2A of this Article, or G.S. 143-355(k)
- J. Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams may be assessed civil penalties pursuant to G.S. 143-215.6A(b1) of up to ten thousand dollars (\$10,000) per day.
- K. Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams may be assessed civil penalties pursuant to G.S. 143-215.88A which provides that any person that intentionally or negligently discharges oil into waters of the State shall incur, in addition to any other penalty provided by law, a penalty in the amount not to exceed five thousand dollars (\$5,000) for every such violation.
- L. The State's enforcement costs in this matter may be assessed against Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams pursuant to G.S. 143-215.3(a)(9) and G.S. 143B-282.1(b)(8).

M. G. Landon Davidson, pursuant to delegation provided by the Secretary of the Department of Environmental Quality and the Director of the Division of Water Resources, has the authority to assess civil penalties in this matter.

Based upon the above Findings of Fact and Conclusions of Law, I make the following:

III. DECISION

Accordingly, Claudene Cody DBA Texaco Food Mart, Dirk Cody, David Cody, and Dana Cody-Adams are hereby assessed a civil penalty of:

\$ 0.00 for violation of G.S. 143-215.83 by the discharge of petroleum product(s) from one or more underground storage tanks into waters of the State.

\$ 113,400.00 for 378 violations of Title 15A NCAC 02B .0211 (2) by impacts from petroleum product(s) entering Tulula Creek and Cheoah River resulting in the issuance of a recreational use advisory for 378 days, from August 19, 2016 to September 1, 2017.

\$ 18,550.00 for 53 violations of Title 15A NCAC 02B .0215 (3)(h)(ii)(C)) for impacts from petroleum product(s) such that benzene concentrations exceeded the Water Supply surface water standard for 52 sampling events at monitoring site SW02 and 19 sampling events at monitoring site SW03 between August 18, 2016 and September 1, 2017.

\$ 21,350.00 for 61 violations of Title 15A NCAC 02B .0211(19) for impacts from petroleum product(s) such that toluene concentrations exceeded the Trout Waters surface water standard for 60 sampling events at monitoring site SW02 and 57 sampling events at monitoring site SW03 between August 18, 2016 and September 1, 2017.

\$ 153,300.00 TOTAL CIVIL PENALTY, authorized by NCGS 143-215.6A

\$ 14,063.63 Enforcement Costs

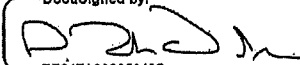
\$ 167,363.63 TOTAL AMOUNT DUE

As required by G.S. 143-215.6A(c), in determining the amount of penalty, I considered the factors set out in G.S. 143B-282.1(b), which are:

- (5) The amount of money saved by noncompliance;
- (6) Whether the violations were committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
- (8) The cost to the State of the enforcement procedures

9/29/2017

Date

DocuSigned by:

7E617A3B2B5848C...

G. Landon Davidson, P.G.
Regional Supervisor, Asheville Regional Office
Water Quality Regional Operations Section
Division of Water Resources

Appendix A

Appendix A															
Site ID	Date	Benzene		Toluene				Site ID	Date	Benzene		Toluene			
		Human Health	Water Supply	Trout Waters	Freshwater Aquatic Life	Human Health	Water Supply			Human Health	Water Supply	Trout Waters	Freshwater Aquatic Life	Human Health	Water Supply
		51	1.19	0.36	11	180	50			51	1.19	0.36	11	180	50
		ug/l								ug/l					
SW-02	8/18/2016	18.0			210.0			SW-03	8/18/2016	27.0			270.0		
	8/23/2016	4.5			26.3				8/23/2016	<1			<1		
	8/26/2016	5.9			45.7				8/26/2016	1.4			11.2		
	8/30/2016	9.6			98.8				8/30/2016	3.1			31.1		
	9/6/2016	5.5			39.2				9/6/2016	<1			3.1		
SW-02	9/14/2016	4.1			27.7			SW-03	9/14/2016	<1			6.6		
	9/19/2016	4.4			30.2				9/19/2016	1.1			8.0		
	9/27/2016	4.2			26.2				9/27/2016	1.0			5.9		
	10/5/2016	3.8			21.0				10/5/2016	<1			5.0		
	10/11/2016	2.5			12.0				10/11/2016	0.95			4.2		
SW-02	10/12/2016	4.9			25.8			SW-03	10/12/2016	1.1			5.5		
	10/19/2016	4.4			20.8				10/19/2016	<1			3.0		
	10/26/2016	3.9			16.4				10/26/2016	<1			4.0		
	11/2/2016	3.0			13.5				11/2/2016	<1			3.3		
	11/15/2016	1.1			3.6				11/15/2016	0.71 N3			2.3		
SW-02	12/1/2016	5.0			25.6			SW-03	12/1/2016	1.9			9.7		
	12/7/2016	10.4			79.0				12/7/2016	3.7			29.6		
	12/15/2016	13.9			91.8				12/15/2016	4.0			27.3		
	12/20/2016	<1			<1				12/20/2016	3.2			23.2		
	12/29/2016	8.1			51.4				12/29/2016	2.4			16.8		
SW-02	1/4/2017	<1			1.0			SW-03	1/4/2017	<1			<1		
	1/12/2017	5.4			35.1				1/12/2017	2.1			12.5		
	1/18/2017	2.0			14.0				1/18/2017	2.0			14.0		
	1/19/2017	8.0			51.6				1/19/2017	1.5			8.6		
	1/26/2017	3.3			24.2				1/26/2017	<1			6.3		
SW-02	2/2/2017	7.2			51.4			SW-03	2/2/2017	2.3			17.0		
	2/9/2017	6.4			48.4				2/9/2017	2.2			17.1		
	2/16/2017	6.8			51.7				2/16/2017	2.3			18.2		
	2/22/2017	5.3			38.5				2/22/2017	1.3			8.0		
	3/1/2017	4.5			38.6				3/1/2017	1.5			12.4		
SW-02	3/9/2017	4.4			32.5			SW-03	3/9/2017	1.5			12.0		
	3/15/2017	4.7			38.8				3/15/2017	1.7			13.5		
	3/22/2017	3.6			28.6				3/22/2017	1.1			7.8		
	3/27/2017	1.5			11.0				3/27/2017	1.3			9.8		
	3/30/2017	2.8			20.3				3/30/2017	<1			6.2		
SW-02	4/5/2017	3.1			28.7			SW-03	4/5/2017	<1			6.7		
	4/11/2017	0.64 N3			5.0				4/11/2017	1.1			8.8		
	4/13/2017	2.7			24.5				4/13/2017	<1			8.7		
	4/20/2017	2.7			22.6				4/20/2017	<1			6.4		
	4/27/2017	1.4			13.0				4/27/2017	<1			4.7		
SW-02	5/4/2017	2.3			22.8			SW-03	5/4/2017	<1			8.1		
	5/11/2017	2.3			22.7				5/11/2017	<1			8.7		
	5/17/2017	3.1			26.4				5/17/2017	1.0			9.2		
	5/23/2017	0.86 N3			7.7				5/23/2017	0.67 N3			5.8		
	5/25/2017	1.2			10.9				5/25/2017	<1			2.5		
SW-02	6/1/2017	2.7			26.5			SW-03	6/1/2017	<1			8.8		
	6/8/2017	2.2			20.1				6/8/2017	<1			8.2		
	6/15/2017	1.1			10.0				6/15/2017	<1			3.3		
	6/19/2017	0.67 N3			5.5				6/19/2017	0.78 N3			6.0		
	6/23/2017	1.6			12.4				6/23/2017	<1			1.9		
SW-02	6/29/2017	<1			4.8			SW-03	6/29/2017	<1			5.5		
	7/6/2017	1.3			13.1				7/6/2017	<1			3.2		
	7/13/2017	2.8			32.6				7/13/2017	<1			6.8		
	7/20/2017	3.2			30.6				7/20/2017	<1			8.4		
	7/27/2017	1.2			9.1				7/27/2017	<1			<1		
SW-02	8/1/2017	1.4			13.0			SW-03	8/1/2017	1.0			10.0		
	8/3/2017	3.7			37.9				8/3/2017	1.1			11.5		
	8/10/2017	<1			4.1				8/10/2017	<1			<1		
	8/17/2017	1.3			12.2				8/17/2017	<1			1.6		
	8/24/2017	1.9			15.1				8/24/2017	<1			3.3		
	8/31/2017	1.4			12.3				8/31/2017	<1			1.1		

STATE OF NORTH CAROLINA
COUNTY OF GRAHAM

IN THE OFFICE OF ADMINISTRATIVE
HEARINGS
17-EHR-05898

CLAUDENE CODY

PETITIONER,

v.

NC DEPARTMENT OF ENVIRONMENTAL
QUALITY, DIVISION OF WASTE
MANAGEMENT

RESPONDENT.

SETTLEMENT AGREEMENT

Petitioner Claudene Cody ("Petitioner") and Respondent North Carolina Department of Environmental Quality ("NCDEQ"), Division of Waste Management ("DWM") ("Respondent") hereby enter into this Settlement Agreement ("Agreement") in order to resolve a matter in controversy between them. This matter arose out of the issuance of a Civil Penalty Assessment in the amount of \$10,000.00 plus \$774.89 for investigative costs ("CPA") (attached hereto as Exhibit A). The CPA was for alleged violations of 15A NCAC 2N .0502, .0504 and .0506, as well as 15A NCAC 2N .0601 and .0603 as described in the CPA.

Without any hearing of fact or law in the above-styled matter, IT IS THEREFORE AGREED BY THE PARTIES THAT:

1. In order to avoid the cost and delay of further litigation, the parties have entered into this Agreement and have agreed that all parties have been correctly designated and that there is no question as to misjoinder or nonjoinder.
2. The Petitioner shall pay DWM seventy percent (70%) of the \$10,000.00 total penalty plus the \$774.89 for investigative costs, for an amount totaling \$7,774.89 ("Settlement

Amount”), in full settlement of all violations described in the CPA. The Settlement Amount shall be made in a lump sum payment due within thirty (30) calendar days of the execution of this Agreement. The payment shall be made by check and made payable to the “North Carolina Department of Environmental Quality” and delivered to the following address:

If sending via US Postal Service

Carolyn Hudnell, Admin. Assistant
NC DOJ
9001 MSC
Raleigh, NC 27699-9001

If sending via delivery service (UPS, FedEx, etc.)

Carolyn Hudnell, Admin. Assistant
NC DOJ
119 W. Edenton St.
Raleigh, NC 27603

3. Within fourteen (14) days of execution of this Agreement by the parties, the Petitioner shall file a notice of voluntary dismissal with prejudice of the Petitioner’s Petition for Contested Case Hearing in the above captioned matter, 17 EHR 05898.
4. This agreement only addresses the civil penalties identified in the attached CPA and does not address in any way other penalties assessed by Divisions within NCDEQ, including penalties assessed by the Division of Water Resources. Furthermore, nothing in this Agreement shall restrict the right of NCDEQ, including DWM, to inspect or take enforcement action against Claudene Cody for any other violations of the Underground Storage Tank (UST) statutes, the relevant rules promulgated thereunder, or any UST permits or certificates held by Petitioner. Similarly, nothing in this Agreement shall restrict the right of the Petitioner to contest any other enforcement action.
5. It is understood and agreed that payments made or actions taken pursuant to the terms of this Agreement are not to be construed as an admission of liability by Petitioner, nor as an admission by the Respondent that the penalty was improperly issued, and that this Agreement is a compromise of disputed claims.

6. The Petitioner and Respondent agree that, for purposes of any future bankruptcy proceeding, this Agreement is not intended as, nor shall it be deemed to constitute, a novation of any claims asserted by the Respondent against the Petitioner. Petitioner further agrees that pursuant to 11 U.S.C. § 523 all sums payable to the Respondent pursuant to this Agreement are nondischargeable in bankruptcy. Nothing in this Agreement releases any nondischargeability claims that may be asserted by Respondent in any bankruptcy proceeding, and nothing in this Agreement shall be deemed a waiver of Respondent's right to rely on the nature of any claim or debt released in this Agreement to show that the claim or debt is nondischargeable.
7. The parties agree that the consideration for this settlement is the promises contained herein and that this Agreement contains the whole agreement between them.
8. This Agreement is entered into knowingly, intelligently, and voluntarily and shall be binding upon the parties, their successors and assigns, upon execution by the undersigned, who represent and warrant that they are authorized to enter into this Agreement on behalf of the parties hereto. The Petitioner was represented by counsel, William Clarke of Roberts & Stevens, P.A.

**RESPONDENT NORTH CAROLINA DEPARTMENT OF ENVIRONMENTAL
QUALITY, DIVISION OF WASTE MANAGEMENT**

Ruth Strauss

Ruth Strauss, Head
UST Permits and Inspection Branch
Division of Waste Management
North Carolina Department of Environmental Quality

Executed this the 15th day of February, 2018.

Approved by:

William F. Lane

William F. Lane
General Counsel
North Carolina Department of Environmental Quality

This the 15th day of February, 2018.

PETITIONER CLAUDENE CODY

Claudene Cody by Dini Cody with permission
Claudene Cody 2-22-18

William Clarke 2-27-18
William Clarke
Counsel for Claudene Cody
Roberts & Stevens, PA



ROY COOPER
Governor

MICHAEL S. REGAN
Secretary

MICHAEL SCOTT
Director

August 4, 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7016 0340 0000 5919 8371

Claudene Cody
PO Box 218
Robbinsville, NC 28771

Re: Assessment of Civil Penalty for Violation(s) of:
15A NCAC 2N .0502, .0504, .0506, .0601, and .0603
Crown Food Mart / Facility ID# 00-0-0000016996 / Graham County
Enforcement File: UST# 17-075P

Dear Ms. Cody:

This letter transmits notice of civil penalty assessed against Claudene Cody in the amount of \$10,000.00 and \$774.89 investigative costs, for a total of \$10,774.89.

Attached is a copy of the assessment document explaining this penalty. This action was taken under the authority vested in me by delegation pursuant to North Carolina General Statutes (NCGS) § 143B-10, §143-215.6A and § 143-215.94W. Any continuing violation(s) may be the subject of a new enforcement action, including an additional penalty.

You must take one of the three actions outlined below within thirty (30) days from the date of receipt of this letter. Please be advised that if you fail to exercise one of the following options within thirty (30) days, you will lose your right to appeal or contest this case and your case will be forwarded to the Attorney General's Office for collection.

1. Submit payment of the penalty:

Payment should be made directly to the order of the Department of Environmental Quality (NCDEQ). Payment of the penalty will not foreclose further enforcement action for any continuing or new violation(s). Please submit payment to the attention of:

Jan Hardy, Enforcement Coordinator
NCDEQ / DWM / UST Section
1646 Mail Service Center
Raleigh, NC 27699-1646

OR

EXHIBIT A

2. Submit a written request for remission including a detailed justification for such request:

Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Because a remission request forecloses the option of an administrative hearing, such a request must be accompanied by a waiver of your right to an administrative hearing and a stipulation and agreement that no factual or legal issues are in dispute. Please prepare a detailed statement that establishes why you believe the civil penalty should be remitted, and submit it to the address listed below. In determining whether a remission request will be approved, the following factors shall be considered:

- (a) whether one or more of the civil penalty assessment factors in NCGS § 143B-282.1(b) were wrongfully applied to the detriment of the violator;
- (b) whether the violator promptly abated continuing environmental damage resulting from the violation;
- (c) whether the violation was inadvertent or a result of an accident;
- (d) whether the violator has been assessed civil penalties for any previous violations; or
- (e) whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

Please note that all evidence presented in support of your request for remission must be submitted in writing. The Director will review your evidence and inform you of his/her decision in the matter of your remission request. The response will provide details regarding the case status, directions for payment, and provision for further appeal of the penalty to the Committee. Please be advised that the Committee cannot consider information that was not part of the original remission request considered by the Director. Therefore, it is very important that you prepare a complete and thorough statement in support of your request for remission.

In order to request remission, you must complete and submit the enclosed "Request for Remission of Civil Penalties, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form within thirty (30) days of receipt of this notice. The Director also requests that you complete and submit the enclosed "Justification for Remission Request" form. Both forms should be submitted to the following address:

Jan Hardy, Enforcement Coordinator
NCDEQ / DWM / UST Section
1646 Mail Service Center
Raleigh, NC 27699-1646

OR

3. File a petition for an administrative hearing with the Office of Administrative Hearings:

If you wish to contest any statement in the attached assessment document you must file a petition for an administrative hearing. You may obtain the petition form from the Office of Administrative Hearings. You must file the petition with the Office of Administrative Hearings within thirty (30) days of receipt of this notice. A petition is considered filed when it is received in the Office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., except for official state holidays. The petition may be filed by facsimile (fax) or electronic mail by an attached file (with restrictions) - provided the signed original, one (1) copy and a filing fee (if a filing fee is required by NCGS §150B-23.2) is received in the Office of Administrative Hearings within seven (7) business days following the faxed or electronic transmission. You should contact the Office of Administrative Hearings with all questions regarding the filing fee and/or the details of the filing process. The mailing address and telephone and fax numbers for the Office of Administrative Hearings are as follows:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
Tel: (919) 431-3000
Fax: (919) 431-3100

One (1) copy of the petition must also be served on NC DEQ as follows:

William F. Lane, General Counsel
NCDEQ
1601 Mail Service Center
Raleigh, NC 27699-1601

Failure to exercise one of the options above within thirty (30) days of receipt of this notice, as evidenced by an internal date/time received stamp (not a postmark), will result in this matter being referred to the Attorney General's Office for collection of the penalty through a civil action.

Please be advised that additional penalties may be assessed if the violations that are the subject of this action have not been corrected. If you have any questions, please contact Jan Hardy at (919) 707-8266.

Sincerely,



Ruth A. Strauss, UST Permits and Inspection Branch Head
Division of Waste Management, NCDEQ

Enclosures
cc: Files

- D. On August 18, 2016, DWM conducted a compliance inspection at the site. This inspection revealed that 0.2 gallon per hour leak rate tests were not being conducted every 30 days for two USTs, leak detection records were not being maintained and failing automatic tank gauge leak rate tests on April 1, 2016, June 4, 2016 and July 28, 2016 were not reported or investigated.
- E. On August 23, 2016, DWM sent Claudene Cody a Notice of Violation (NOV) stating that, per 15A NCAC 2N .0502, a valid method of leak detection must be conducted for two USTs; per 15A NCAC 2N .0504, a valid 0.2 gallon per hour leak rate test must be conducted every 30 days for two automatic tank gauges associated with two USTs; per 15A NCAC 2N .0506, records demonstrating compliance with leak detection requirements must be maintained; per 15A NCAC 2N .0601 suspected releases from two UST systems must be reported; and per 15A NCAC 2N .0603 suspected releases from two UST systems must be investigated. The NOV was sent by certified mail and received on September 30, 2016.
- F. On July 3, 2017, DWM sent Claudene Cody a Notice of Recommendation for Enforcement Action. This notice was sent by certified mail and received on July 13, 2017.
- G. Staff costs and expenses associated with detecting the violations, defining their nature and extent and bringing the enforcement action totaled \$774.89.

Based upon the above Findings of Fact, I make the following:

II. CONCLUSIONS OF LAW:

- A. Claudene Cody is a 'person' within the meaning of NCGS 143-215.6A and 143-215.94W pursuant to NCGS 143-212(4).
- B. UST rules at 15A NCAC 2N have been adopted by the EMC pursuant to NCGS 143-215.3, 143-215.94T, 143-215.94V, 143B-282(a)(2)(h), and 143-214.1.
- C. NCGS 143-215.6A and 143-215.94W allow the Secretary of the Department of Environmental Quality to assess a civil penalty of not more than \$10,000.00 per day against any person who violates a rule of the Commission implementing, among others, Part 1, Article 21, Chapter 143, of NCGS (including NCGS 143-214.1 and 143-215.3) or Part 2B, Article 21A, Chapter 143, of NCGS (including NCGS 143-94T and 143-94V).
- D. Claudene Cody was in violation of 15A NCAC 2N .0502, .0505 and .0506 by failing to comply with leak detection requirements for two UST systems for October and November 2015, and February and March 2016.
- E. Claudene Cody was in violation of 15A NCAC 2N .0601 and .0603 from April 8, 2016 through at least August 18, 2016 by failing to report and investigate suspected releases

from two UST systems, in accordance with the procedures and requirements of the cited rule.

- F. NCGS 143.215.3(a)(9) provides that the reasonable costs of any investigation, inspection or monitoring survey may be assessed against a person who violates any regulations adopted by the EMC.

Based upon the above Findings of Fact and Conclusions of Law, I make the following:

III. DECISION

Pursuant to NCGS 143-215.6A and 143-215.94W, in determining the amount of the penalty, I have taken into account the Findings of Fact and Conclusions of Law and have specifically considered each and every factor listed in NCGS 143B-282.1(b), as follows:

- a) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violation(s);
- b) The duration and gravity of the violation;
- c) The effect on ground or surface water quantity or quality or on air quality;
- d) The cost of rectifying the damage;
- e) The amount of money saved by noncompliance;
- f) Whether the violation was committed willfully or intentionally;
- g) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
- h) The cost to the State of the enforcement procedures.

Accordingly, Claudene Cody shall be, and hereby is, assessed a civil penalty of:

\$ <u>5,000.00</u>	for violation of 15A NCAC 2N .0502, .0504 and .0506 by failing to comply with leak detection requirements for two UST systems for October and November 2015, and February and March 2016, in accordance with the procedures and requirements of the cited rule.
--------------------	---

\$ <u>5,000.00</u>	for violation of 15A NCAC 2N .0601 and .0603 from April 8, 2016 through at least August 18, 2016 by failing to report and investigate suspected releases from two UST systems, in accordance with the procedures and requirements of the cited rule.
--------------------	--

\$ <u>10,000.00</u>	TOTAL CIVIL PENALTY which is authorized by NCGS 143-215.6A.
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\$ 774.89

Investigation costs which are authorized by NCGS 143-215.3(a)(9).

\$ 10,774.89

TOTAL AMOUNT DUE

IV. NOTICE

I reserve the right to assess civil penalties and investigative costs for any continuing violations occurring after the assessment period indicated above. Each day of a continuing violation may be considered a separate violation subject to a maximum \$10,000.00 per day penalty. Civil penalties and investigative costs may be assessed for any other rules and statutes for which penalties have not yet been assessed.

V. TRANSMITTAL

This CIVIL PENALTY ASSESSMENT is directed to be transmitted to Claudene Cody in accordance with NCGS 143-215.6A(d) and 143-215.94W(d).

8/4/2017
Date

Ruth A. Strauss
Ruth A. Strauss, UST Permits and Inspection Branch Head
Division of Waste Management

NCDEQ- Division of Waste Management
UST Section
Compliance Penalty Matrix

Page 1 of 1

Violator:	Claudene Cody	Assessor:	Ruth A. Strauss <i>RAS</i>
Site/Facility:	Crown Food Mart	Date:	August 4, 2017
Case No.:	UST # 17-075P	Violation(s): (See Below):	
(1) 15A NCAC 2N .0502, .0504 and .0506 by failing to comply with leak detection requirements for two UST systems (LD1, LD17 & RCD5).			
(2) 15A NCAC 2N .0601 and .0603, failing to report and investigate suspected releases from two UST systems (RLS1 & RLS3).			

ASSESSMENT FACTORS	MINOR	SIGNIFICANT	EXTREMELY SIGNIFICANT	PENALTY		
				1	2	
I. Amount Saved by Noncompliance:	<input type="checkbox"/> <\$2500 (P= \$100.00- \$500.00)	<input type="checkbox"/> \$2,500 - \$10,000 (P= \$500.01- \$1,500.00)	<input checked="" type="checkbox"/> >\$10,000 (P= >\$1,500.01)	\$2,000.00	\$2,000.00	
II.A Violator History and Intent: A. Violation was committed willfully or intentionally:	<input type="checkbox"/> Constructive Knowledge Only (P= \$100.00)	<input checked="" type="checkbox"/> Actual Knowledge (P= \$500.01- \$1,500.00)	<input type="checkbox"/> Previous Civil Penalty Assessment(s) for Identical Violation(s) (P= >\$1,500.01)	\$1,500.00	\$1,500.00	
II.B Violator History and Intent: B. Prior record of failing to comply with UST rules and regulations	<input checked="" type="checkbox"/> N/A	<input type="checkbox"/> NOV(s) Issued for Unrelated Violation(s) (P= \$500.01- \$1,500.00)	<input type="checkbox"/> Previous Civil Penalty Assessment(s) for Unrelated Violation(s) (P= >\$1,500.01)	\$0.00	\$0.00	
III. Duration and Gravity of the Violation:	<input type="checkbox"/> 0-6 Months (P= \$100.00- \$500.00)	<input type="checkbox"/> 6-24 Months (P= \$500.01- \$1,500.00)	<input checked="" type="checkbox"/> >24 Months (P= >\$1,500.01) Free product discharging into the river.	\$1,500.00	\$1,500.00	
Totals				\$5,000.00	\$5,000.00	\$0.00
Total Penalty				\$10,000.00		

STATE OF NORTH CAROLINA

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
FILE NO. UST# 17-075P

COUNTY OF GRAHAM

IN THE MATTER OF ASSESSMENT
OF CIVIL PENALTY AGAINST:

CLAUDENE CODY

)
)
) REQUEST FOR REMISSION OF CIVIL
) PENALTY, WAIVER OF RIGHT TO
) AN ADMINISTRATIVE HEARING,
) AND STIPULATION OF FACTS
)
)
)

Having been assessed a civil penalty totaling \$10,774.89 for violation(s) of 15A NCAC 2N .0502, .0504, .0506, .0601 and .0603 as set forth in the assessment document of the Director of the Division of Waste Management dated 8/4/17, the undersigned, desiring to seek remission of the civil penalty, does hereby waive the right to an administrative hearing in the above-stated matter and does stipulate and agree that the facts are as alleged in the assessment document. The undersigned further understands that all evidence presented in support of remission of this civil penalty must be submitted to the Director within thirty (30) days of receipt of the notice of assessment. No new evidence in support of a remission request will be allowed after thirty (30) days from the receipt of the notice of assessment.

This the _____ day of _____, 20____.

SIGNATURE

PRINT NAME

TITLE (President, Owner, etc.)

ADDRESS

TELEPHONE

STATE OF NORTH CAROLINA

NORTH CAROLINA
ENVIRONMENTAL MANAGEMENT COMMISSION
FILE NO. UST# 17-075P

COUNTY OF GRAHAM

IN THE MATTER OF ASSESSMENT
OF CIVIL PENALTY AGAINST:


CLAUDENE CODY

)
)
) JUSTIFICATION FOR REMISSION REQUEST
)
)
)
)
)

Please use this form when requesting remission of this civil penalty. You must also complete the "Request For Remission, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form to request remission of this civil penalty. You should attach any documents that you believe support your request and are necessary for the Director to consider in determining your request for remission. Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Pursuant to NCGS § 143B-282.1(c), remission of a civil penalty may be granted only when one or more of the following five factors applies. Please check each factor that you believe applies to your case and provide a detailed explanation, including copies of supporting documents, as to why the factor applies (attach additional pages as needed).

- ___ (a) one or more of the civil penalty assessment factors in NCGS § 143B-282.1(b) were wrongfully applied to the detriment of the petitioner (the assessment factors are included in the attached penalty matrix);
- ___ (b) the violator promptly abated continuing environmental damage resulting from the violation (i.e., explain the steps that you took to correct the violation and prevent future occurrences);
- ___ (c) the violation was inadvertent or a result of an accident (i.e., explain why the violation was unavoidable or something you could not prevent or prepare for);
- ___ (d) the violator has not been assessed civil penalties for any previous violations;
- ___ (e) payment of the civil penalty will prevent payment for the remaining necessary remedial actions (i.e., explain how payment of the civil penalty will prevent you from performing the activities necessary to achieve compliance).

EXPLANATION (attach additional pages as necessary):

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY		
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Address</p> <p>B. Received by (Printed Name) C. Date of Delivery <i>Brenda Shope</i> <i>8/9-16</i></p> <p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>		
<p>1. Article Addressed to:</p> <p style="text-align: center;">Claudene Cody PO Box 218 Robbinsville, NC 28771</p>	<p style="text-align: center;"><i>17-075P (CPA)</i></p>		
<div style="text-align: center;">  9590 9402 1812 6074 5467 43 </div>	<p>3. Service Type</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Signature Confirmation Restricted Delivery </td> </tr> </table>	<input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Signature Confirmation Restricted Delivery
<input type="checkbox"/> Adult Signature <input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Certified Mail® <input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Priority Mail Express® <input type="checkbox"/> Registered Mail™ <input type="checkbox"/> Registered Mail Restricted Delivery <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Signature Confirmation <input type="checkbox"/> Signature Confirmation Restricted Delivery		
<p>2. Article Number (Transfer from service label)</p> <p style="text-align: center;">7016 0340 0000 5919 8371</p>	<p><small>Mail Restricted Delivery (b)</small></p>		
<p>PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt</p>			